

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-12131
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 22, 2008
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on October 22, 2008. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On August 17, 2007, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits to June 2007.

(2) On October 2, 2007, the Medical Review Team denied claimant's application for Medical Assistance stating that claimant's impairments did not meet duration and approved claimant for State Disability Assistance from July 2007 through February 2008.

(3) On October 8, 2007, the department caseworker sent claimant notice that his application was denied.

(4) On January 3, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 28, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and decision: the mental condition improved with treatment. The back problem is medically managed. The medical evidence of record indicates that the claimant's condition improved with medical compliance and will not prevent all work (at least unskilled, light) 12 months from the date of onset or from the date of surgery. Therefore MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was reviewed and denied.

(6) The hearing was held on October 22, 2008. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on April 7, 2009.

(8) On April 14, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c), and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 203.28. The claimant has a history of substance abuse. In [REDACTED] the claimant was in residential substance treatment as part of his parole. In [REDACTED] the claimant

presented to ER due to back pain. The doctor indicated his x-rays were normal. His back looked physically normal. Strength and sensation were normal.

(9) Claimant is a 48-year-old man whose birth date is [REDACTED]. Claimant is 5' 11" tall and weighs 139 pounds. Claimant recently lost 35 pounds. Claimant has 22 college credits and is able to read and write and does have basic math skills.

(10) Claimant last worked June 2007 for [REDACTED] in quality control. Claimant has also worked as a hi-lo driver and as an assistant manager at [REDACTED].

(11) Claimant alleges as disabling impairments: herniated disc, L3-4 compressed nerve, depression, back pain, mild scoliosis, agoraphobia, panic attacks and anxiety.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);

- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis,

what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since June 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant is status post treatment inpatient from [REDACTED] for a suicide attempt and depression secondary to the death of his father. The condition was aggressively treated with medication and therapy. At discharge [REDACTED], the claimant's condition had improved. He was alert and oriented. Thought processes were logical. Affect was appropriate. His insight and judgment were appropriate. He was not actively suicidal and had no homicidal ideas. (Page 85A) On physical examination mild scoliosis was noted in the upper back. There was decreased range of motion and minimal tenderness on palpitation in the lumbar spine. Gait was normal. Strength was 5/5 in the upper and lower extremities. (Page 90) An [REDACTED] emergency room visit indicates that claimant was alert. His HEENT was normal. No icterus, pallor, nose and the neck, throat was clear. Claimant's chest was clear. His heart was regular and no click, gallop or rub and no murmur. Claimant's abdomen was soft with obvious discomfort. No masses or organomegaly. In his musculoskeletal system claimant had no clubbing. He had good capillary revealed. No peripheral edema. On claimant's skin he had no palpable nodules or visible rash. Claimant subjectively stated that he had severe low back pain. The ER he was x-rayed in his LS spine and was normal. He was given Dilaudin and a Fentanyl patch for pain. The radiologic interpretation was an x-ray of LS spine in two views. There was no fracture, dislocation, no boney abnormalities. Normal two view LS spine x-ray. In [REDACTED] claimant

lost his father and attempted to commit suicide by trying to carbon monoxide or poison himself in the garage. There is a mental residual functional capacity assessment in the case from [REDACTED] [REDACTED] which indicates that claimant was markedly limited in most areas and moderately limited in other areas. (Pages 118-119) A psychiatric medical report of [REDACTED] indicates that claimant had a GAF of 50 and he was oriented to time, person and place. He had immediate memory and could repeat forward six numbers and backward three numbers. He could recall three objects and three minutes later could not recall any of the three objects. Claimant was able to state that past presidents were Bush, Clinton, Kennedy and Bush and tell his birthday as June 27, 1960. Claimant named five large cities as Detroit, Philadelphia, Traverse City, Dallas and New York and famous people as Jay Leno, Oprah Winfrey, Nicholas Cage and President Bush. Events he stated he didn't know because he didn't watch the news that often. He subtracted sevens from 100 which was 100, 93, 86, 78, 71, and 64 and multiplied single digits such as $2 \times 6 = 12$, $4 \times 5 = 20$, $6 \times 6 = 36$, $7 \times 8 = 49$ and $8 \times 9 = 63$. Claimant stated that a bush and a tree are alike because they are plants and they were different colors and that if he found a stamped, addressed envelope he would mail it out. If he discovered a fire in a theater he would go get help. He was diagnosed with having a history of major depressive disorder and dysthymic disorder. Claimant could manage his own funds. (Pages 107-113)

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in his back; however, there are no laboratory or x-ray findings which are consistent with claimant's allegations about his back pain. There is no clinical impression that claimant is

deteriorating. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. Claimant testified that he suffers from agoraphobia; however, he was able to come to the hearing and sit through the entire hearing. Claimant testified that he has anxiety and panic attacks but he usually has panic attacks one or two times per week and they last about thirty minutes. Claimant testified that his medications do help him for his depression. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. Claimant's past relevant work was as an administrative assistant which was sedentary, as a data

entry clerk which was sedentary and as an assistant manager which was light to medium work. Claimant testified on the record that he could stand for 5 minutes, walk for 5 minutes and sit for 5 to 10 minutes. It should be noted that claimant sat for at least a half an hour at the hearing. Claimant is able to shower and dress himself and squat but stated that he could not bend at the waist, tie his shoes or touch his toes. Claimant testified that the heaviest weight he could carry is 5 to 10 pounds and that he hurt his right wrist by falling two months ago and in his left leg he has sciatica and numbness. Claimant testified that his level of pain on a scale from 1 to 10 without medication is an 8 to a 9 and with medication is a 5. Claimant testified that in a typical day he sleeps in the morning and then wakes up and read and watches television and does the internet for approximately 30 minutes per day. Claimant testified that he was physical therapy two times per week and he does exercises during the day and eats and cleans up. This Administrative Law Judge finds that there is insufficient objective medical/psychiatric evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in in the past. Thus, if claimant had not already been denied at Step 2, he would again be denied at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant has failed to provide the necessary

objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level for a period of 12 months. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

Claimant testified on the record that he does have agoraphobia, depression, anxiety, and panic attacks.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing and was able to answer all the questions and was responsive to the questions at the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 48), with a more than high school education and an unskilled work history who is limited to light work is not considered disabled

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 6, 2009

Date Mailed: May 6, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/vmc

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